Supreme Court, U.S.
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No. 91-161

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

FRED WILMOT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY OF PETITIONER FRED WILMOT TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The Government suggests, without citation of authority, that Fred Wilmot's Petition for a Writ of Certiorari[1] should be denied because the case is not ripe for review by this Court. Memorandum for the United States in Opposition at 3. The Government argues that Mr. Wilmot must first undergo the ordeal of a criminal trial before he can seek review in this Court of a final decision of the Eighth Circuit Court of Appeals. This case is ripe for review and the Petition for Writ of Certiorari should be granted.

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[1] Fred Wilmot's Petition for a Writ of Certiorari contains his Rule 29.1 statement at page ii thereof. Sup. Ct. R. 29.1 (1991).

This Court has jurisdiction to review by writ of certiorari the decision of the Eighth Circuit Court of Appeals. 28 U.S.C. § 1254. The Government argues, however, that this case is not ripe because "[i]f petitioners are acquitted following a trial on the merits, their contentions will be moot." Memorandum for the United States in Opposition at 3. This Court has stated in determining that a matter was ripe for review that "[o]ne does not have to await the consumation of threatened injury to obtain preventive relief." *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923).

In *Wayte v. United States*, 470 U.S. 598 (1985), this Court granted certiorari to a case coming before it in a similar posture. The petitioner in *Wayte* was indicted for willfully failing to register with the Selective Service. *Id.* at 603. The indictment was dismissed by the District Court, *Id.* at 604-05, and the dismissal was reversed on appeal. *Id.* at 606. "Recognizing both the importance of the question and a division in the Circuits" this Court granted certiorari. *Id.* at 607.

Including *Wayte*, this Court has granted certiorari on at least four occasions, between 1971 and the present, in cases in the same posture as that of Mr. Wilmot. *The Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988); *Adamo Wrecking Co. v. United States*, 434 U.S. 275 (1978); and *Sefass v. United States*, 420 U.S. 377 (1975). *See Bland v. United States*, 412 U.S. 909 (1973) (Justices Douglas, Brennan & Marshall dissenting from denial of writ of certiorari) (case in same posture). Prior to 1971 this Court had direct appellate jurisdiction from a district court's dismissal of an indictment. 18 U.S.C.A. § 3731, Historical and Revision Notes.

CONCLUSION

This case is ripe for review. The Government, without citation of authority, asks this Court to abandon its established practice of reviewing decisions coming before it in the same posture. Petitioner Fred Wilmot respectfully requests that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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